

ORDINANCE NO. 2281

AN ORDINANCE AMENDING BEND CODE CHAPTER 7.16 SHORT TERM RENTAL OPERATING LICENSE, 7.40 SPECIAL EVENTS, AND 7.50 MARIJUANA BUSINESS OPERATING LICENSE

Findings:

- A. In the course of administering the City's programs for Short Term Rentals, Special Events, and Marijuana Businesses, staff in the City Manager's office have identified improvements to the Code to ensure internal consistency and to improve administration of the programs.
- B. The proposed changes are of a primarily ministerial nature, and do not impact or change any substantive rights or obligations under existing programs or Code requirements.
- C. 7.16 Short Term Rental Operating License changes:
 - 1. A business registration is not needed as a requirement of the Short Term Rental Operating License as not all short term rentals are operated as commercial businesses.
 - 2. Short term rental operators must apply for an operating license within the appropriate deadline, but are not subject to obtaining the license due to delays that may occur on the City's timeline of license issuance.
 - 3. Short term rental operators need not advertise their Short Term Rental Operating License number on advertisements as it is not issued until the license issued and advertisements are a part of the initial application process. Data is categorized more heavily by address information than license number information, as well.
 - 4. Applicants must be in good standing with the City of Bend prior to issuance of a license.
- D. 7.40 Special Events changes:
 - 1. Most special events require security and/or crowd management. Requiring special event applicants to provide a security and/or crowd management plan as part of the application will allow the City to evaluate security for the proposed event.
 - 2. The amendments required security personnel at special events to have appropriate identification to identify themselves as the security or crowd control workers. In addition to carrying or wearing appropriate identification, all security personnel at special events will be required to present their state-issued certification or work permit to City officials on demand while they are working.

3. The prohibition on non-service animals at special events has been difficult to enforce and has had inconsistent enforcement. The amendments remove the general prohibition on non-service animals at special events, and allow special event coordinators to choose whether to ban animals, consistent with City code.
4. The traffic control plan name is inconsistent within the code language and requires uniformity. The requirement also needed to be tied to Bend Development Code

E. 7.50 Marijuana Business Operating License changes:

1. There needs to be a clear differentiation between what is required, and what is required, if available. The site and floor plans as well as square footage are required of applicants to complete an application. A certificate of occupancy is only required if one is available at the time of application.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend City Code Chapter 7.14 Short Term Rental Operating License, 7.40 Special Events and Chapter 7.50 Marijuana Business Operating License is revised to read as shown on the attached Exhibit A.

Section 2. All other provisions of the Bend Code remain unchanged and in full effect.

First Reading Date: November 16, 2016

Second Reading Date: December 7, 2016

YES: Jim Clinton, Mayor
Victor Chudowsky
Doug Knight
Sally Russell
Nathan Boddie
Casey Roats
Barb Campbell

NO: NONE



Jim Clinton, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



City Attorney's Office

Exhibit A

7.16.040 Application and fee.

A. Application Required. Applications for an operating license shall be on forms provided by the City, demonstrating the application meets the standards required by this chapter. The Owner or authorized agent shall certify the following information to be true and correct:

1. Owner Information. Owner's name, permanent residence address, permanent residence telephone number, and the short term rental address and telephone number. The application must also include the names, mailing addresses, and telephone numbers of all persons holding an ownership interest in the property, or holding an ownership interest in the entity that owns the property.

2. Representative Information. If the Owner does not permanently reside within the Bend City limits or is not always available when the property is being rented, the Owner shall provide the name, telephone number and email of a representative (which can be a person or company) who can be contacted concerning use of the property and/or complaints related to the short term rental, as set forth in Section 7.16.070 below.

3. Land Use Approval. The PZ number of the land use approval for the short term rental use or exemption under current or former Bend Development Code or determination by COD of a legal nonconforming use, must be submitted with the application.

4. Parking. Statement that required parking spaces are available, with a dated photo(s) submitted of interior and exterior parking spaces. A parking diagram of these approved parking spaces shall also be submitted.

5. Occupancy. Occupancy limits and number of bedrooms.

6. Use in Prior Twelve Months. Documentation as set forth in Section 7.16.070(B) that the dwelling was rented at least once in the last twelve months for existing short term rentals (if permitted in the last twelve months), and upon each annual license renewal for existing and new short term rentals, unless the hardship exemption is met as set forth in that section.

7. Good Neighbor Guidelines. Acknowledgment of receipt and review of a copy of the good neighbor guidelines. In addition, evidence that the good neighbor guidelines has been effectively relayed to short term rental tenants, by incorporating it into the rental contract, including it in the rental booklet, posting it online, providing it in a conspicuous place in the dwelling unit, or a similar method.

8. Listing Number. If they advertise, the listing numbers or website addresses of where the short term rental advertises (such as the VRBO/AirBNB/rental website#, account#, uri, etc.).

~~9. Business license number, if required by Chapter 7.05.~~

~~10.9.~~ Such other information as the City Manager or designee deems reasonably necessary to administer this chapter.

B. Incomplete Application. If a license application does not include all required materials, the application will be considered incomplete and the City will notify the applicant, in writing, explaining the information required. If the applicant provides the missing required information within 30 days of the date of the notice, the application will be reviewed. If the applicant does not provide the required information, the application will be deemed withdrawn and the City will refund the application fee.

C. License Fee. The fee for application for a short term rental operating license or license renewal shall be in an amount to recover the City's actual average costs of reviewing and issuing the license application or license renewal application, including a fee for a late application, investigation and any required inspections, as established by resolution of the City Council.

7.16.060 Operating license and license renewal.

A. License Must be Obtained. An operating license shall be obtained and/or renewed as required in this section. The ability to operate a short term rental in the City of Bend shall be discontinued for failure to obtain or renew a license to operate as provided in this chapter.

B. Application and Renewal Application Process. A person engaging in a short term rental who has not yet obtained an operating license, or who is required to renew an existing operating license, shall do so as follows:

1. Time for Application.

a. Existing Short term Rentals. A completed operating license renewal application and renewal fee is due for all existing short term rentals on September 1, 2015 and annually every year thereafter.

b. New Permits. For new land use permits issued after the effective date of this chapter, it is the responsibility of the Owner or authorized agent to apply for and receive an operating license within sixty days of receiving the final land use approval to permit the use of the property of a short term rental.

c. Sale of the Property. Upon change in ownership authorized by this Chapter and Bend Development Code Chapter 3.6 of a property subject to a short term rental operating license, it is the obligation and responsibility of the new Owner or authorized agent to obtain a new operating license in order to operate the short term short term rental. The new owner or authorized agent shall have sixty days from the date of ownership (closing of the sale) to apply for and receive a new operating license.

2. Notice. At least sixty days prior to the due date, the City shall send notice of the need for a license or expiration of a license to the Owner of any property for which an application is due as follows:

For the first license required after the effective date of this code, for permitted nonconforming properties, notice will be sent by first class mail to the property owner as determined by the records of Deschutes County from the most recent property tax roll assessment.

For properties that are legal nonconforming uses and were never permitted, it is the Owner's obligation and responsibility to apply for a PZ number and to provide the City with a new address for notification purposes.

For license renewal, notice will be sent to the address of the Owner/Licensee by first class mail and email.

For both the first license and license renewal, if an authorized agent name and address has been submitted to the City after the adoption of this code, the City will also send notice to such agent, although failure to do so does not violate this section.

C. Notice-Late Applications. If the license application or renewal application is not received by the due date, the City shall send notice of expiration to the Owner and authorized agent, if known, of any property for which a timely application has not been received, advising the owner that they have 30 days to respond. An application will be considered timely submitted if the City receives a completed application, accompanied by the required fees, within the 30-day late period.

D. License Expiration. For failure to submit an application, upon expiration of the 30 day late period, the ability to operate shall be conclusively presumed to be discontinued with no further action by the City. For renewals, upon expiration of the late period, the ability to operate shall be conclusively presumed to be discontinued and the City will commence revocation of the license pursuant to the procedures in Section 7.16.090.

For new owners, once the 60-day grace period to apply for a license under the existing land use permit expires as referenced in (3) above, the ability to operate shall be conclusively presumed to be discontinued with no further action by the City.

E. Renewal Standards.

1. The City will review an application for operating license renewal and issue a renewal provided all the standards in this chapter continue to be met. If not met, the City will not renew the operating license and the property shall not be used as a short term rental.

2. A decision on an operating license application or renewal may be appealed as provided in Section 7.16.110.

7.16.070 Criteria for approval of an operating license and operating license renewal.

A. The applicant has the burden of proof to demonstrate compliance with each applicable criterion for approval or renewal of the operating license. The approval criteria also operate as continuing code compliance obligations of the Owner. Staff may verify evidence submitted and the applicant shall cooperate fully in any investigation.

B. To receive approval, an applicant must demonstrate that all approval criteria listed below has been satisfied:

1. Proof of Use. The Owner shall demonstrate that the property has been rented at least once in the prior twelve months, for the first license and every year upon renewal, as demonstrated by one or more of the following: a room tax remittance form, a rental contract with the tenant, rental receipts, or other documentation satisfactory to the City (subject to the hardship exception in (2) below). During the first year of this licensing program, the exception to this requirement is for permits issued between July 3 and September 1, 2015, uses that did not formerly require a permit, or nonconforming uses permitted after September 2, 2014, which may not have a year of potential use to demonstrate. Such Owners shall demonstrate use upon the next annual renewal. Information provided by the Owner under Chapter 12.05, Room Tax, shall be kept confidential to the extent allowed or required by law.

2. Operating License Revocation. If an Owner does not demonstrate proof of use during the prior twelve months as set forth in 7.16.070(8)(1), an operating license shall be revoked by the City under Section 7.16.090 below. The exception to this criteria for continuation of an operating license is a temporary hardship exception, which includes submission of proof,

acceptable to the City, that:

(1) a medical condition of the Owner, domestic partner or immediate family member that jeopardizes the ability of the Owner to operate the short term rental, or (2) the death of the spouse, domestic partner or immediate family members that jeopardizes the ability of the owner to operate the short term rental; or (3) Structural integrity of the short term rental that deems it uninhabitable for tenants and is not self-imposed.

The City may attach a time limit to this hardship exception. A time limit may be set by the City Manager but shall not exceed 6 months. A one-time extension may be approved upon request if one of the conditions of this section still apply.

3. Land Use Approval. The property has received land use approval under current or former development code or is a legal non-conforming use. If the land use permit is modified under Bend Development Code Chapter 3.6.500 (such as to increase the number of bedrooms or parking spaces), the operating license shall be modified as well within 30 days.

4. Contact Information. The Owner or authorized agent has provided information sufficient to verify a qualified person will be available to be contacted about use of the short term rental during and after business hours. The Owner or representative shall be available to be contacted by telephone to ensure a response to the short term rental address at all hours (24 hours a day, seven days a week) while the dwelling unit is occupied for rent. The designated representative may be changed from time to time throughout the term of the license. To do so, the license information shall be revised with the City at least 14 days prior to the date the change takes effect, except when the failure to do so is beyond the Owner or authorized agent's control. In an emergency or absence, contact forwarding information to a qualified person may be provided for the Owner or representative.

5. Notice to Neighbors. The Owner or authorized agent shall either: (1) provide an annual mailing or otherwise distribute by hand, a flier to neighbors within a 250 foot radius of the short term rental property address containing the ~~operating license number~~ owner and/or representative contact information, or (2) post a small placard or sign as permitted by the Bend Sign Code Chapter 9.5, near the adjacent street advising neighbors and tenants of the same information where it can be seen from the public right-of-way.

The purpose of this notice is so that adjacent property owners and residents can contact a responsible person to report and request resolution of problems associated with the operation of the short term rental. If the permanent contact information changes during the license period, the new information must be mailed or distributed again, or changed on the placard or sign.

6. Electronic Availability. In addition, the City will make a database electronically accessible within which any person can enter in an address of a short term rental and obtain the owner/authorized agent and/or representative's name and telephone number.

C. Health and Safety.

1. Fire and Emergency Safety. A completed checklist for fire safety (fire extinguishers, smoke alarms, carbon monoxide detectors, etc.) shall be required with each annual operating license application and renewal.

2. Owner Responsibility. It is the Owner's responsibility to assure that the short term rental is and remains in substantial compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.

D. Mandatory Postings. The short term rental license issued by the City shall be displayed

in a prominent location within the interior of the dwelling adjacent to the front door. The license will contain the following information:

1. A number or other identifying mark unique to the short term rental operating license which indicates the license is issued by the City of Bend, with the date of expiration;
2. The name of the owner or representative and a telephone number where the owner or representative may be contacted;
3. The number of approved parking spaces;
4. The maximum occupancy permitted for the short term rental;
5. Any required information and conditions specific to the operating license (such as a maximum of 29 days available for rent per 12-month period);
6. The property address; and
7. The City of Bend official logo.

E. No Pending Actions or Violations. At the time of application, the Owner of a short term rental shall not have received a civil citation regarding compliance of the subject short term rental property with any provision of the Bend City Municipal Code. A voluntary assurance of compliance, negotiated compliance agreement, or deferred sentence agreement will satisfy the requirement that there be no pending actions or violations. The Owner shall be in compliance with the Room Tax Code pursuant to Chapter 12.05, and subject to the Tax Administrator's authority under that chapter. The Owner must be in good standing with Code Enforcement including no active cases or unresolved issues.

~~F. Business License. The owner shall have a current business license if required by the Business License Code, Chapter 7.05.~~

~~G. F. Parking Diagram. The parking diagram of the approved parking spaces shall be provided to tenants and be available in a prominent location within the short term rental dwelling.~~

7.16.080 Additional operational requirements.

~~A. Advertising and License Number. The Owner or authorized agent shall put the annual operating license number on all advertisements for the specific property, if legally possible.~~

~~B. A. Response to Complaints. The Owner or representative shall respond to neighborhood questions, concerns, or complaints in a reasonably timely manner depending on the circumstances.~~

1. Complaints. The Owner or representative should maintain a record of complaints and the actions taken in response to the complaint, if relevant, in an electronic or written manner deemed reasonable to document the interaction. If kept, this record can then be made available for City inspection upon request to investigate under (3) below.

2. City Authority. Certain types of complaints are subject to the City's regulatory authority under other sections of the Municipal Code (noise complaints, disorderly conduct, chronic nuisance, etc., under Bend Code, Title 5, Public Protection, which are enforced by the Bend police department). Other complaints related to occupancy and on-site parking are subject to the City's code enforcement authority under the Development Code, Chapter 3.6.500. It is not intended that the Owner, agent or representative act as a peace officer or code enforcement

officer or put themselves in an at-risk situation.

However, reasonable initial inquiries or complaints related to noise, disturbances, occupancy or parking may first be made to the Owner or representative. In addition, complaints specifically related to the good neighbor guidelines, or the condition, operation or conduct of occupants of the short term rental, should first be made to the Owner or representative. If there is a failure to respond or a clearly inadequate response by the Owner or representative, a complaint may be submitted to the City on a form provided by the City and the City will respond or investigate as needed. The City will first seek voluntary compliance or resolution, but if the City finds substantial evidence supports further action given the complaint(s), the City will follow the warning procedures set forth in Section 7.16.090(A)(6). Alternatively and in its discretion, the City may refer the complaint to the City program for dispute resolution and/or mediation.

3. Records. On request and in compliance with the public records law, the City shall provide the owner, authorized agent and/or representative with the information in the complaint.

4. Grounds for Warning. Repeated failure of the Owner or representative to timely and reasonably respond to a complaint(s) relayed by City staff is considered grounds for a warning and potential revocation under Section 7.16.090. Issuance of a noise (as sustained on appeal if applicable) citation to a tenant may be grounds for a warning to the Owner, only if under the circumstances in the reasonable judgment of the City Manager the Owner should be held responsible. Issuance of a public nuisance citation may be grounds for a warning in the appropriate circumstances.

5. Administrative Rules. The City Manager shall have the authority to establish administrative rules and regulations consistent with the provisions of this chapter for the purpose of interpreting, clarifying, carrying out, furthering, and enforcing the provisions of this chapter. A copy of such administrative rules and regulations shall be on file of the Office of the City Recorder and be posted on the City website.

7.40.010 Special Event Permit Required

(1) Special events are prohibited without a City Special Event Permit.

(2) No more than three special events per month requiring a street closure are allowed in the District during July and August. No more than two events per month requiring a street closure are allowed at any other time. The Council may by motion allow events in the District requiring street closure in excess of the maximum otherwise allowed if the Council determines that:

(a) The street closure will be limited in location and/or duration or will occur at a time that will have minimal impact on downtown businesses, and

(b) The public benefit from the event is expected to outweigh any negative effect on downtown businesses

(3) The City will maintain a calendar listing the date and location of each special event, date and location. Existing events have precedence over new events.

(4) Applications for Special Event Permits must be submitted as far in advance as possible and no less than ~~30~~ 90 days if for a new event and no less than 60 days if a repeat event in advance of the event in order to allow time for review by all affected City departments. A pre-application conference is required for special events that have not previously been approved by the City. The City Manager may waive the ~~30-day~~ deadline if

the applicant provides good cause why the applicant was unable to meet the deadline.

7.40.020 Special Event Permit Application, Fees and costs.

A. The applicant for a special event permit shall pay a permit fee in the amount set by Council resolution. The applicant shall be responsible for reimbursement of costs incurred by the City as a result of the special event. These costs may include any expenses or lost revenue incurred by the City. The City may require a deposit to cover anticipated costs. After the event, the City shall determine its actual costs, including staff time, and require payment if the deposit was insufficient for costs incurred, and shall refund any excess.

B. Each application for a special event permit shall include:

1. A complete application form that includes a description of the event, the number of people reasonably expected to attend, and a description of any amplified sound to be used;
2. An accessibility plan;
3. A security and/or crowd management plan;
4. A parking plan;
5. A communication plan;
6. A ~~vehicle traffic flow~~ traffic control plan;
7. A sanitation plan;
8. A fire protection plan;
9. A map showing the location to be used for the event, and the number of persons reasonably anticipated to attend;
10. Proof that the applicant has provided notice of the proposed event to any affected neighborhood association, and for events in the district, to the Downtown Bend Business Association. A neighborhood association is affected by an event if the event is held within or adjacent to the boundaries of the neighborhood;
11. Evidence of insurance or that insurance will be issued; and
12. The application fee.

Samples of accessibility plans, parking plans, communication plans, ~~vehicle traffic flow~~ traffic control plans, sanitation plans and fire protection plans are available from the City.

C. For parades, the application shall also include the route of the parade and assembly points, the proposed starting and ending time and the estimated number of participants (persons, vehicles and animals). The City may deny parade permits to avoid impact on transportation, businesses and public infrastructure projects.

7.40.040 Public Safety

(1) Adequate traffic control, fire control personnel and equipment, and crowd control and security shall be contracted for or otherwise provided by the applicant, and shall conform to the standards required by the City.

(2) ~~Security personnel may be required to wear appropriate identification.~~ If security is required at the special event, all security personnel must have appropriate identification identifying them as event crowd control or security. Additionally, security personnel may be required to wear a uniform or other item of identification.

All security personnel are required to present their state-issued certification card or PS-20 (Temporary Work Permit) upon request to City officials when working. ~~If using the 10:1 ratio crowd management exception, provided in ORS 181.871(k) and ORS 181.871(2)(b), documentation of personnel should be provided upon request.~~

- (3) It shall be the duty of the security personnel to report any violations of law to the appropriate law enforcement agency.
 - (4) Access to public infrastructure must be maintained through the entire event as required by the City. The City may require event facilities to be located away from items such as hydrants, water valves, manholes and storm drains to ensure proper access.
 - (5) No objects may be thrown to onlookers by parade participants during a parade.
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7.40.060 Animals at Special Events

- (1) ~~No person shall bring an animal into an area where a special event is being held, unless authorized by the City~~ Event managers may prohibit individuals from bringing animals into an area where a special event is being held.
 - (2) This prohibition does not apply to service animals.
 - ~~(3) This prohibition does not apply to events held specifically for animals.~~
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7.40.070 Street Closure

- (1) No city street will be closed for a special event unless the City has approved the closure. Applications for a right-of-way permit for any sidewalk, lane or street closures shall be submitted no less than 90 ~~30~~ days in advance and shall include a circulation and a traffic control plan (BDC 3.40). If the street to be closed is a state highway, the applicant shall obtain approval from the Oregon Department of Transportation.
 - (2) Requests for street closures in the District will be granted only if the applicant demonstrates that the event cannot be held without a street closure or there is a specified safety reason to close the street(s)
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7.50.040 Marijuana business operating license application

An application for a marijuana business operating license, including a renewal or change or modification, must be on a City form and include the following information:

- A. The name, address, and telephone number of the applicant(s), including every person or entity with any ownership interest in the marijuana business.
- B. The driver's license number or other government-issued photo identification number of all owners and managers of the business. If the applicant is an entity, the driver's license number or other government-issued photo identification number of all owners and managers of the entity.
- C. A statement that the applicant is fully aware and knowledgeable of the applicable rules and regulations established by the Oregon Health Authority, the Oregon Liquor Control Commission and this chapter.
- D. For medical marijuana businesses, proof that the Oregon Health Authority has registered the medical dispensary at the location on the application and the registry identification card number of the person responsible for the medical marijuana dispensary.

E. For recreational marijuana businesses, proof that the Oregon Liquor Control Commission has registered the facility at the location on the application. [Ord. NS 2257, 2:G4a}

F. An authorization signed by the property owner approving the use of the property by the applicant for the particular marijuana business type(s) specified on the application.

G. A valid City of Bend Business Registration number for the business.

H. A site plan and floor plan ~~and certification of occupancy when available~~ along with designation of the square footage for each use. A certificate of occupancy, when available.

